IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 763 OF 1997

The State of Maharashtra ....
Appellant.
(Orig.Complt.)
V/s

Munna @ Munir Gaus Shaikh... ....
Respondent.
(Orig.accd.)

Mr.A.S. Shitole, APP for the appellant.

Mr.Shekhar A. Ingawale, Adv. for the respondent.

CORAM: V.G. PALSHIKAR
AND
R.C. CHAVAN, JJ.

12th July, 2005.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of acquittal passed by the learned Additional Sessions Judge, Kolhapur in Sessions Case No.17/97 on 21.8.1997 the State-appellant has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Public Prosecutor for the State

and the learned advocate for the respondent we have scrutinized the entire evidence on record and reappreciated the same.

3. The prosecution story as disclosed by reappreciation of evidence stated briefly is that on 9.9.1996 at about 9.00 p.m. deceased Ramakant Chaugule left his house saying the wife (P.W.1-Bharati) that he would go and contact the accused because the deceased learnt that accused had accepted some money from P.W.20-Sabnis. Within 30 minutes complainant P.W.1-Bharati heard some noise of fall outside her house and therefore, she came out of the house situated in the residential quarters of C.P.R. Hospital, Kolhapur. She saw that her husband had sustained bleeding injuries. On enquiry deceased Ramakant made a verbal statement to P.W.1-Bharati that Munna Shaikh caused him knife wounds in Sambhaji Chowk area and ran away. On hearing the hue and cry of the wife of the deceased, the persons residing in that locality gathered immediately and they took deceased in C.P.R. Hospital, Kolhapur for medical treatment. However, while the treatment was going on, Ramakant Chaugule could not survive for long and died in the hospital at 11.00 p.m.

4. A report Ex.13 was immediately lodged to the police by P.W.1-Bharati and an offence was registered at Laxmipuri Police Station, it being crime Register No.121 of 1996. P.W.21-Police Inspector

Sonawane did the investigation of the said crime. He prepared an inquest panchnama Ex.8 and on the next day morning a spot panchnama Ex.20 was prepared. The article found on the spot of the incident were seized and sealed by the police. The statement of the witnesses were recorded from time to time and the dead body was sent for autopsy. The clothes on the person of deceased produced by police constable Shri Apte were seized at Ex.9 and the blood sample of the deceased was also collected. Till then though the police were in search of the accused, they could not arrest him. However, on 14.9.1996 on receiving the information the police arrested the accused at 10.15 p.m. Near isolation Hospital Chowk, Kolhapur.

5. A blood stained pant was seized from the person of the accused at the time of his arrest vide Ex.23. A knife and the T-shirt were seized by the police on 18/9/1996 at the instance of the accused when they were found kept in dilapidated premises. The sample of the blood of the accused was also collected. During investigation, P.I. Sonawane sent all the articles seized for analysis and in the mean time he also collected the post mortem notes. After the investigation was concluded the charge sheet was submitted in the Court.

6. The prosecution examined as many as 22 witnesses to prove its case that the accused murdered the victim. Unfortunately for prosecution except P.W.1-Bharati and P.W.10-Vishal all other witnesses

have turned hostile. The learned trial Judge on appreciation of the evidence as it stands acquitted the accused of the offence with which he was charged which acquittal is subject matter of this appeal. As observed by us above the prosecution suffers from hostility of witnesses to a very very large extent. The evidence of P.W.1-Bharati who is the wife of the deceased is complete, but she is not an eye witness. She heard sound and came out to find her husband lying in pool of blood with severe knife injuries. She was told by the victim that the assailant was the accused and that she has no knowledge of the assault. P.W.10-Vishal has not turned hostile and has stated that he learnt that the accused was the person who assaulted the victim from P.W.1-Bharati therefore the testimony of P.W.10-Vishal is of no use being hearse

7. According to the learned additional public prosecutor the uncorroborated testimony of P.W.1-Bharati is sufficient to hold the accused guilty under section 320 as that statement coupled with recoveries made at the instance of the accused, blood stains on the weapon are adequate to warrant the conviction.

8. We are unable to accept this contention of the learned additional public prosecutor as the prosecution has failed to establish that the recovery made by the prosecution of the weapon, of the blood stained clothes was made at the instance of the accused. Even if the

prosecution therefore has succeeded in proving that the blood stains were of human blood and the knife was also having blood stains the connection between these two and the accused is lacking which could come only through the prosecution witnesses i.e. panch witnesses to the recovery of these items. The deposition of P.W.1-Bharati and P.W.10-Vishal is of no consequence in such circumstances and it is definitely unsafe to rely upon the statement of panch witnesses who have turned hostile merely because the police official who executed those panchnama says that it was executed. In any case the evidence of such link is very weak evidence. According to the testimony of P.W.1-Bharati herself several people had gathered when the victim fell at his door, yet the prosecution could not succeed in getting any instant evidence to corroborate the testimony of P.W.1-Bharati. True it is that uncorroborated testimony of any witness in such circumstances may be only to warrant the conviction but in this case one thing is clear that Bharati is not an eye witness. She has deposed that she was told by the victim. It is also in evidence that the victim died immediately after reaching the hospital. There is no evidence coming even from Bharati-P.W.-1that the victim spoke only three sentences connecting the accused to the assault. Taking into consideration deteriorating and precarious health condition of the victim it becomes very unsafe to rely upon the testimony of P.W.1-Bharati alone for

coming to definite conclusion that it was the accused only who was named by the victim. It is possible that he might have mentioned the name of the accused as he had gone to meet the accused and therefore surmises drawn by the witness regarding the accused being the assailant. In such circumstances necessity of corroboration is an obvious requirement, that having been absent in the instant case no fault can be found with the learned trial Judge for acquitting the accused.

9. We have scrutinized the judgment of the learned trial Judge. He has marshaled the evidence correctly. He has noted the hostility of the witnesses and consequent deficiency of adequate material on record to warrant conviction. We are in agreement with the findings recorded by the learned trial Judge and see therefore no reason to take any different view. In the result, therefore, appeal fails and is dismissed.